

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:	)	
	)	Bky No. 04-60289
James M. Schultz,	)	
	)	
Debtor.	)	
_____	)	
	)	
Tim Bates,	)	
	)	Adversary No. 04-6042
Plaintiff,	)	
	)	
vs.	)	
	)	
James M. Schultz,	)	
	)	
Defendant.	)	
_____	)	

**NOTICE OF HEARING AND MOTION  
OF DEFENDANT FOR EXTENSION OF DISCOVERY  
DEADLINE AND DEADLINES FOR FILING OF  
NON-DISPOSITIVE AND DISPOSITIVE MOTIONS**

The Defendant, James Schultz, moves this Court to extend the deadlines in this case for completion of discovery and the filing of non-dispositive and dispositive motions.

1. The Court will hold a hearing on this motion on **September 29, 2004, at 10:00 a.m.**, U.S. Bankruptcy Courtroom #204, U.S. Courthouse, 118 South Mill Street, Fergus Falls, Minnesota.

2. Any response to this motion must be filed and delivered not later than seven days, including intermediate Saturdays, Sundays and legal holidays, prior to the time set for the hearing, or mailed and filed not later than ten days before the hearing date. Unless a response

opposing the motion is timely filed, the Court may grant the motion without a hearing.

3. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 34 Bankruptcy Rule 5005 and Local Rule 1070-1. The adversary proceeding in which this motion is filed is a core proceeding. The petition commencing this case was filed March 15, 2004. The case is a Chapter 7 liquidation action. Said bankruptcy case and this adversary proceeding are now pending in this Court. This motion arises under Paragraph 7 of this Court's July 19, 2004 Scheduling Order entered in the above-entitled adversary proceeding.

James Schultz requests that this Court extend the deadlines for discovery and the filing of non-dispositive and dispositive motions in this adversary proceeding as follows:

- A. Discovery deadline October 29, 2004;
- B. Non-dispositive motion filing deadline October 29, 2004;
- C. Dispositive motion filing deadline November 30, 2004.

The extension of these deadlines is appropriate for the reasons set forth below.

4. This adversary proceeding was commenced by the Plaintiff in the middle of June, 2004. In an effort to obtain information concerning Plaintiff's claims, James Schultz served Interrogatories and Demand for Production of Documents Set I on Plaintiff's counsel on June 25, 2004.

5. In early August, Plaintiff served his Answers to James Schultz's Interrogatories and Demand for Production of Documents Set I. Based on a review of said responses, James Schultz's attorney believed there were a number of difficulties with respect to the same. On August 12, 2004, James Schultz's attorney wrote to Plaintiff's counsel asking for supplemental

answers from the Plaintiff. See Exhibit A annexed hereto on August 12, 200. A follow-up letter was written to Plaintiff's attorney. See Exhibit B annexed hereto.

6. The time required to exhaust informal efforts to resolve James Schultz's concerns over Plaintiff's Answers to James Schultz's Interrogatories and Demand for Production of Documents Set I will extend beyond the September 13, 2004 discovery deadline established by this Court. James Schultz asks this Court to extend the discovery deadline to avoid the need for him to immediately file a Motion to Compel Discovery. With the extension of the discovery deadline, the deadlines for the filing of non-dispositive and dispositive motions should also be extended.

Dated this 13<sup>th</sup> day of September, 2004.

VOGEL LAW FIRM

By: 

Jon R. Brakke

#10765

218 NP Avenue

P.O. Box 1389

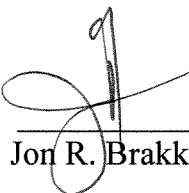
Fargo, ND 58107-1389

(701) 237-6983

ATTORNEY FOR DEFENDANT

Jon R. Brakke, counsel for the Plaintiff, the moving party named in the foregoing Notice of Hearing and Motion declares under penalty of perjury that the contents of this Motion are correct to the best of his knowledge, information and belief.

Dated this 13<sup>th</sup> day of September, 2004.

  
Jon R. Brakke



Jon R. Brakke

Phone: 701.237.6983 | Fax: 701.476.7676 | [jbrakke@vogellaw.com](mailto:jbrakke@vogellaw.com)

August 12, 2004

David C. McLaughlin  
Attorney at Law  
25 Second Street NW, Suite 102  
Ortonville, MN 56278

RE: James M. Schultz, Debtor - Bky No. 04-60289  
Tim Bates v. James M. Schultz - Adv. No. 04-6042  
Your File No. 304-3723  
Our File No. 30,140

Dear Mr. McLaughlin:

I have reviewed Plaintiff's answer to Defendant's Interrogatories and Demand for Production of Documents, Set I, and request the same be supplemented as discussed below:

- 1) in the answer to Interrogatory and Demand for Production of Documents, No. 2, it is indicated Defendant represented he had ordered all material and sent in payment. It is not clear to me whether the statements were allegedly made on January 24, 2002 or at a later date.
- 2) in responding to Interrogatory and Demand for Production of Documents, No. 5, Plaintiff indicates it was his understanding the check was a deposit that was to be held by the Defendant and not used for other purposes. Plaintiff must state when the discussion occurred and exactly what was said by the Defendant that gave rise to this understanding on the part of the Plaintiff.
- 3) in the answer to Interrogatory and Demand for Production of Documents, No. 7, Plaintiff states it was his understanding from prior dealings with the Defendant that Northland Ag Builders was a trade or business name of the Defendant. What information, statements, etc. gave rise to this understanding on Plaintiff's part.

218 NP Avenue | P.O. Box 1389 | Fargo, ND 58107-1389 | [www.vogellaw.com](http://www.vogellaw.com) | Offices in Fargo, Bismarck, and Moorhead

Including the former Gunhus Law Firm <sup>GOHUS</sup>

*Exhibit A*

August 12, 2004

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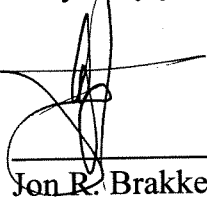
- 4) Interrogatory and Demand for Production of Documents, No. 10, required Plaintiff to detail the specific contents or terms of the agreement referenced in Paragraph 10 of Plaintiff's Complaint. Plaintiff's answer indicates only that representations regarding delivery date were made during a phone conversation on January 24, 2004. Aside from delivery date, what were the other terms of this supposed agreement.
- 5) Interrogatory and Demand for Production of Documents, No. 13, required Plaintiff to specify the factual basis for its claim that Defendant's conduct constitutes theft. Plaintiff's answer was to refer generally to the "... actions of the Defendant." Plaintiff must state exactly which of Defendant's actions referenced in the answers to Interrogatories and Demand for Production of Documents 1 through 12 are the basis for Plaintiff's claim of theft.
- 6) Interrogatory and Demand for Production of Documents, No. 14, required Plaintiff to specify the factual basis for his assertion that Defendant's conduct constitutes fraud or defalcation while acting in a fiduciary capacity, embezzlement and/or larceny. Plaintiff's answer was to refer to the response to Interrogatory and Demand for Production of Document, No. 13. As noted in the preceding paragraph, however, the answer to Interrogatory and Demand for Production of Documents, No. 13 was not specific. Plaintiff must detail the particular actions of the Defendant upon which Plaintiff relies for his theft claim.
- 7) Interrogatory and Demand for Production of Documents, No. 15, required Plaintiff to specify the alleged false pretenses, false representations and/or actual fraud committed by the Defendant. Plaintiff's response was to refer generally to his answers to the preceding Interrogatories and Demand for Production of Documents. This is not adequate. Plaintiff is required to detail the particular conduct of the Defendant upon which Plaintiff relies respecting its claim of false pretenses, false representations and/or actual fraud.
- 8) Interrogatory and Demand for Production of Documents, No. 16, required the Plaintiff to specify all facts upon which he bases his claim that Defendant committed intentional and malicious injury to Plaintiff's interests and/or property. Plaintiff's response was to refer to the answers to all the preceding Interrogatories and Demand for Production of Documents. Plaintiff must specify the precise conduct of the Defendant that Plaintiff believes constitutes willful and malicious injury to Plaintiff's interests and/or property.
- 9) Interrogatory and Demand for Production of Documents, No. 17, seeks specific information on contacts the Plaintiff had with any government authorities respecting

criminal proceedings involving the Defendant. Defendant's response was to refer to the answers to the preceding Interrogatories and Demand for Production of Documents. Of those answers, the only one with any possible relevance was the answer to Interrogatory and Demand for Production of Documents No. 13. In that answer, the Plaintiff references a contact with the Grant County Sheriff's Office without providing a date, what was discussed, etc. In the answer to Interrogatory and Demand for Production of Documents, No. 17, Plaintiff also refers to generally to "other contacts made by the Plaintiff." For all contacts, Plaintiff must provide the information requested by the subparts of Interrogatory and Demand for Production of Documents No. 17.

- 10) Plaintiff's answers to Defendant's Interrogatories and Demand for Production of Documents refer to a number of attached exhibits. No exhibits accompanied the copy of the responses faxed to me on August 6, 2004.

Within the next twenty days I request supplemental answers in accord with the above together with copies of the exhibits referenced in Plaintiff's initial responses.

Very truly yours,

  
Jon R. Brakke

JRB:hak



Jon R. Brakke

Phone: 701.237.6983 | Fax: 701.476.7676 | [jbrakke@vogellaw.com](mailto:jbrakke@vogellaw.com)

September 8, 2004

David C. McLaughlin  
Attorney at Law  
25 Second Street NW, Suite 102  
Ortonville, MN 56278

RE: James M. Schultz, Debtor - Bky No. 04-60289  
Tim Bates v. James M. Schultz - Adv. No. 04-6042  
Your File No. 304-3723  
Our File No. 30,140

Dear Mr. McLaughlin:

May I hear from you immediately with respect to my letter of August 12, 2004. Absent the receipt of supplemental discovery responses within the next 10 days, I will assume it is necessary to file a motion to compel discovery.

Very truly yours,

Jon R. Brakke  
JRB:ldt

*Exhibit B*

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:	)	
	)	Bky No. 04-60289
James M. Schultz,	)	
	)	
Debtor.	)	
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	)	
Tim Bates,	)	
	)	Adversary No. 04-6042
Plaintiff,	)	
	)	
vs.	)	
	)	
James M. Schultz,	)	
	)	
Defendant.	)	
_____	)	

**BRIEF IN SUPPORT OF MOTION  
OF DEFENDANT FOR EXTENSION OF DISCOVERY  
DEADLINE AND DEADLINES FOR FILING OF  
NON-DISPOSITIVE AND DISPOSITIVE MOTIONS**

In the above-entitled action, the Defendant promptly pursued discovery. Plaintiff's responses to Defendant's Interrogatories and Demand for Production of Documents, Set I, were late. Additionally, in Defendant's belief, the same were inadequate. Defendant is attempting to resolve this discovery dispute without the filing of a Motion to Compel Discovery. However, the deadline for discovery expires today. As a consequence, Defendant seeks an extension of the discovery deadlines. This would also make it appropriate to extend the deadlines for the filing of non-dispositive and dispositive motions.



Dated this 13<sup>th</sup> day of September, 2004.

VOGEL LAW FIRM

By: 

Jon R. Brakke

#10765

218 NP Avenue

P.O. Box 1389

Fargo, ND 58107-1389

(701) 237-6983

ATTORNEY FOR DEFENDANT

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:	)	
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Debtor.	)	
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Tim Bates,	)	
	)	Adversary No. 04-6042
Plaintiff,	)	
	)	
vs.	)	
	)	
James M. Schultz,	)	
	)	
Defendant.	)	
_____	)	

**ORDER GRANTING MOTION TO  
EXTEND DEADLINES FOR  
DISCOVERY AND FILING OF  
NON-DISPOSITIVE AND DISPOSITIVE MOTIONS**

In the above-entitled action, Defendant filed a Motion for Extension of the Discovery, Non-Dispositive Motion and Disposition Motion filing deadlines. Based on all the files and pleadings herein, this Court believes that good cause exists to grant the requested relief. Therefore, it is the order of this Court:

1. The deadlines for the completion of discovery and the filing of non-dispositive motions is extended to October 29, 2004.

2. The deadline for the filing of dispositive motions is extended to November <sup>30</sup>~~20~~, 2004.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
Honorable Dennis D. O'Brien

